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SUBJECT: INVESTMENT CLIMATE STATEMENT 2006

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¶1. Following is the 2005 Investment Climate Statement for Kenya. This information will also be transmitted to EB/IFD/OIA via e-mail and included in Chapter 6 of the 2006 Country Commercial Guide for Kenya, to be delivered through FCS channels.

A.1. Openness to Foreign Investment

Kenya has had a long history of economic leadership in east Africa as one of the largest and most advanced economies in the region. Inconsistent efforts at structural reforms and poor policies over the past decades generated a prolonged period of decline in development indicators, and significantly eroded the leadership position. While Kenya was a prime choice for foreign investors seeking to establish a presence in eastern and southern Africa in the 1960s and 1970s, poor economic policies, rising problems of corruption and governance, and deterioration of public services have discouraged Foreign Direct Investment (FDI) since the 1980s. However, the Government of Kenya (GOK actively encourages FDI.

The respective roles of the public and private sectors have evolved since independence in 1963, with a shift in emphasis from public investment to private sector-led investment. The GOK has introduced market-based reforms and provided more incentives for both local and foreign private investment. Foreign investors seeking to establish a presence in Kenya generally receive the same treatment as local investors, but there are some exceptions. Multinational companies make up a large percentage of Kenya's industrial sector.

A new investment code, the Investment Promotion Act 2004, is expected to streamline the administrative and legal procedures to achieve a more effective investment climate. The legislation replaces the government's Investment Promotion Center with the new Kenya Investment Authority (KIA). The new law creates some new barriers, namely, it sets the minimum foreign investment threshold at US $500,000 (likely to be reduced to $100,000 in 2006), and conditions some benefits on obtaining an investment certificate from the KIA. Foreign employees are expected to be key senior managers or have special skills not available locally. Foreign investors are required to sign an agreement with the government stating training arrangements for phasing out expatriates. Any enterprise, whether local or foreign, may recruit expatriates for any category of skilled labor if Kenyans are not available.

The Kenyan government focuses its investment promotion on opportunities that earn foreign exchange, provide employment, promote backward and forward linkages, and transfer technology. The only significant sectors in which investment (both foreign and domestic) are constrained are those where state corporations still enjoy a statutory monopoly. These are restricted almost entirely to infrastructure (e.g., power, posts, telecommunications and ports) and the media, although there has been partial liberalization of these sectors. For example, in recent years, five Independent Power Producers (IPPs) have begun operation in Kenya.

All resident companies are subject to tax on their incomes at the rate of 30%. Branches of non-resident companies pay tax at the rate of 37.5%. Taxable income is generally defined to be income sourced in or from Kenya. Value Added Tax (VAT) is levied on goods imported into or manufactured in Kenya, and taxable services provided. The standard VAT rate is 16%. Work permits are required for all foreign nationals wishing to work in the country. It is becoming increasingly difficult for expatriates to obtain work permits because the government says qualified middle level managers and technical staffs are available locally but this may be driven more by the high unemployment level in the country. There is no discrimination against foreign

investors in access to government-financed research. The government's export promotion programs do not distinguish between local and foreign-owned goods.

The United Nations Conference on Trade and Development (UNCTAD), in conjunction with the International Chamber of Commerce (ICC), published an Investment Guide to Kenya in May 2005. The guide provides comprehensive analyses of investment trends, opportunities, and regulatory framework in the country. According to the UNCTAD report, and most observers, significant disincentives for investment in Kenya includes government overregulation and inefficiency, expensive and irregular electricity and water, an underdeveloped telecommunications sector, a poor transportation infrastructure, and high costs associated with crime and general insecurity.

Efforts have been made to harmonize the investment regimes and investment incentives among the East African Community (EAC) countries (Tanzania, Kenya and Uganda). Tariff barriers between the three East African countries were removed in 1999. In 2004, Kenya, Tanzania and Uganda signed a Customs Union Protocol, putting in place a three tier taxation systems and paving the way for further steps towards a common market. Under the protocol, EAC member states are to allow free entry of raw materials from members, levy a 10% on semi-processed goods and a 25% levy on finished goods. Non-Tariff Barriers (NTBs) remain a problem in the EAC. A March 2005 report on NTBs and Development of a Business Climate Index in the Eastern African Region by the East African Business Council identified administration of duties and other taxes as the main NTB, followed closely by corruption. The report also indicates that Kenya's level of investment and business optimism is dampened by low expectations relating to improvements in infrastructure, access to land, and profitability in business.

The GOK has sought-out foreign investment through investment conferences and foreign trips occasionally lead by the Head of State. In August 2005, Kenyan President Kibaki made a five-day visit to China to market the country as an investment destination to Chinese investors.

A.2. Conversion and Transfer Policies

There are no restrictions on converting or transferring funds associated with investment. Under Kenyan law, amounts above KSh 500,000 (about US $6,400) have to be declared as a formal check against money laundering although this is rarely enforced due to lack of appropriate legislation.

Under the Foreign Investment Protection Act (FIPA) (Cap 518), foreign investors are free to convert and repatriate profits including retained profits, which have not been capitalized -- proceeds of the investment after payment of the relevant taxes and the principal and interest associated with any loan. Foreign exchange is readily available from commercial banks and foreign exchange bureaus. Local and foreign investors are allowed to freely buy and sell foreign exchange. Kenya has a floating exchange rate. The Kenya shilling is tied to a basket of foreign currencies and has remained relatively stable in recent years.

A.3. Expropriation and Compensation

Kenyan law provides protection against the expropriation of private property except where due process is followed and adequate and prompt compensation is provided. Expropriation may only occur for either security reasons or public interest. The GOK may revoke a foreign investment license if: an untrue statement is made while applying for the license; the provisions of the Investment Promotion Act or of any other law under which the license is granted are breached; or, if there is a breach of the terms and conditions of the general authority. In practice, licenses are rarely revoked.

A.4. Dispute Settlement

Kenya is a member of the World Bank-affiliated Multilateral Investment Guarantee Agency (MIGA), which issues guarantees against non-commercial risk to enterprises that invest in member countries. It is also a signatory to the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States. The Convention established the International Center for Settlement of Investment Disputes (ICSID) under the auspices of the World Bank and is also a member of the Africa Trade Insurance Agency (ATIA).

Kenya's judicial system is modeled after the British, with magistrates' courts, high courts in major towns and a Court of Appeal at the apex of the judicial system. In addition, there is a separate industrial court that hears disputes over wages and labor terms. Its decisions cannot be appealed. Kenya has commercial courts to deal with commercial disputes. Company and investment law is centered on the Companies Act of 1948. Property and contractual rights are enforceable, but long delays in resolving commercial cases are common.

The Foreign Judgments (Reciprocal Enforcement) Act provides for the enforcement in Kenya of judgments given in other countries that accord reciprocal treatment to judgments given in Kenya. The countries with which Kenya has entered into reciprocal enforcement agreements are Australia, the United Kingdom, Malawi, Tanzania, Uganda, Zambia and Seychelles. Without such an agreement, a foreign judgment is not enforceable in the Kenyan courts except by filing suit on the judgment. Kenyan courts as a general rule recognizes a governing-law clause in an agreement that provides for foreign law. A Kenyan court would not give effect to a foreign law if the parties intended to apply it in order to evade the mandatory provisions of a Kenyan law with which the agreement has its most substantial connection, and which the court would normally have applied.

Foreign advocates are not entitled to practice in Kenya unless they are instructed and accompanied by a Kenyan advocate, although a foreign advocate may practice as an advocate for the purposes of a specified suit or matter if appointed to do so by the Attorney General.

Kenya does not have a bankruptcy law. Creditors' rights are comparable to those in other common law countries. Monetary judgments are usually made in Kenyan shillings. The government does accept binding international arbitration of investment disputes with foreign investors. Apart from being a member of the ICSID, Kenya is a party to the New York Convention on the Enforcement of Foreign Arbitral Awards (1958).

A.5. Performance Requirements and Incentives

Investors in the manufacturing and hotels sectors are permitted to deduct from their taxes a large portion of the cost of buildings and capital machinery. All locally financed materials and equipment (excluding motor vehicles and goods for regular repair and maintenance) for use in construction or refurbishment of tourist hotels are zero-rated for purposes of Value Added Tax (VAT). The Permanent Secretary to the Ministry of Finance must approve such

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purchases. The Government permits some VAT remission on capital goods, including plants, machinery and equipment for new investment, expansion of investment and replacement. The investment allowance under the Income Tax Act is set at 100%. Materials imported for use in manufacturing for export or for production of duty-free items for domestic sale qualify. Approved suppliers, who manufacture goods to be supplied to the exporter, are also entitled to the same import duty relief. The program is also open to Kenyan companies producing goods that can be imported duty-free or goods for supply to the armed forces or to an approved aid-funded project. Fiscal incentives offered by the government to Export Processing Zone (EPZ) investments and registered and approved venture-capital-fund investments include 10 years' tax holiday and a flat 25% tax for the next 10 years; exemption from withholding taxes during the first 10 years; exemption from import duties on machinery, raw materials, and inputs; no restrictions on management or technical arrangements; and exemption from stamp duty and from the VAT on raw materials, machinery and other inputs. The Export Promotion Programs Office, set up in 1992 under the Ministry of Finance, administers the duty remission facility.

The government established a Manufacturing Under Bond (MUB) program in 1986 that is open to both local and foreign investors. Enterprises operating under the program are exempted from duty and VAT on imported plants, machinery, equipment, raw materials and other imported inputs. The Kenya Revenue Authority (KRA) administers the program.

Foreign investors are attracted to the EPZs by the single licensing regime, tax incentives and support services provided such as power and water. The number of enterprises operating in EPZs has increased from 66 in 2003 to 74 in ¶2004. The increase is largely due to preferential access and duty free status accorded to Kenyan apparel exports into the U.S. under the African Growth and Opportunity Act (AGOA). Kenya's major exports under AGOA include apparel and handicrafts. The majority of Kenya's manufactured products are entitled to preferential duty treatment in

Canada and the European Union. By statute, manufacturing companies are not permitted to distribute their own products.

With the exception of the insurance and telecommunications sectors and other infrastructure and media companies discussed earlier, Kenya does not require that its nationals own a percentage of a company. The percentage of foreign equity need not be reduced over time. Technology licenses are, however, subject to scrutiny by the Kenya Industrial Property Office (KIPO) to assure that they are in line with the Industrial Property Act. Licenses are valid for five years and are renewable. Foreign investors are free to obtain financing locally or offshore.

The government does not steer investment to specific geographic locations. Local content rules are applied but only for purposes of determining whether goods qualify for preferential duty rates within the Common Market for East and Southern Africa (COMESA).

A.6. Right to Private Ownership and Establishment

Private enterprises can freely establish, acquire and dispose of interest in business enterprises. In general, "competitive equality" is the standard applied to private enterprises in competition with public enterprises. However, certain parastatals have enjoyed preferential access to markets. Examples include Kenya Reinsurance with a guaranteed market share, Kenya Seed Company with fewer marketing barriers than its foreign competitors, and the Kenya National Oil Corporation with retail market outlets developed with government funds. Some state corporations have also benefited from easier access to cheap government credit.

A.7. Protection of Property Rights

Secured interests in property are recognized and enforced. In theory, the legal system protects and facilitates acquisition and disposition of all property rights - land, buildings and mortgages. In practice, obtaining title to land is a cumbersome and often non-transparent process, which is a serious impediment to new investment. It is frequently complicated by improper allocation of access and easements to third parties. There is also a general unwillingness of the courts to permit mortgage lenders to sell land to collect debts. Foreigners may require Presidential approval to acquire large tracts of agricultural land or any seashore property. Since January 2003, the government has been nullifying some land allocations that were illegally acquired. The question of title to land acquired irregularly under the previous government is the subject of continued controversy. The issue is particularly important because 80% of bank loans are secured with land.

Kenya has a comprehensive legal framework to ensure intellectual property rights protection, which includes the Industrial Property Act 2001, the Trade Marks Act, the Copyright Act 2001, the Seeds and Plant Varieties Act, and the Universal Copyright Convention. The Copyright Act protects literary, musical, artistic, audio-visual works, sound recordings and broadcasts, and computer programs. Criminal penalties associated with piracy in Kenya include a fine of up to KSh 800,000 (about US $10,700), a jail term of up to 10 years and confiscation of pirated material, but enforcement and the understanding of the importance of intellectual property, are poor. The Kenya Industrial Property Institute (KIPI) is responsible for patents, trademarks and trade secrets, under the Ministry of Trade and Industry. Copyright protection is the responsibility of the Attorney General's office.

Kenya is a member of the World Intellectual Property Organization (WIPO) and of the Paris Union (International Convention for the Protection of Industrial Property) along with the U.S. and 80 other countries. A future prospect for patent, trademark, and copyright protection is embodied in the African Intellectual Property Organization, although its enforcement and cooperation procedures are yet untested. Kenya also is a member of the African Regional Intellectual Property Organization (ARIPO). Kenya is a signatory to the Madrid Agreement Concerning the International Registration of Marks, however, the other EAC members (Uganda and Tanzania) are not.

Investors are entitled to national treatment and priority right recognition for their patent and trademark filing dates. The Trade Marks Act provides protection for registered trade and service marks that is valid for 10 years and is renewable. However, actual protection for

intellectual property -- copyrights, patents and trademarks -- is inadequate. The sale of pirated audio and videocassettes is rampant, although there is little domestic production. According to the Business Software Association, an estimated US $3.5 million is lost every year as a result of the use of illegal software, mainly by businesses. Kenya enacted Industrial Property Act (KIPA) in 2002 to comply with WTO obligations, but its implementation of the law remains weak. In 2003, the Kenya Bureau of Standards indicated that over KSh 37 billion (about US $493.3 million) is lost annually in customs and value added taxes due to the sale of counterfeit goods. The government has not yet published its draft anti-counterfeit Bill nor submitted it to Parliament. However, Kenyan authorities have recently increased their IPR enforcement efforts on behalf of textile producers to limit the transshipment of foreign-made garments through the Port of Mombasa (mostly from Asia) that are fraudulently being exported to the U.S. under AGOA preferences. Kenya has also begun a campaign to crackdown on the entry into the local market of counterfeit or "substandard" goods.

A.8. Transparency of the Regulatory System

Investors in Kenya are required to comply with environmental standards. The National Environment Management Authority (NEMA) oversees these matters and is the principal regulatory agency for them. Developers of particular projects are therefore required to carry out Environmental Impact Assessments (EIA) prior to project implementation. Companies are required to submit their up-to-date assessment reports to NEMA for verification by the environment auditors before they can receive an Environmental Impact Assessment license.

In theory, all investors receive equal treatment in the initial screening process. The government screens each private sector project to determine its viability and implications for the development aspirations of the country. For example, a rural agro-based enterprise, with many forward and backward linkages, is likely to receive licensing fairly quickly. However, new foreign investment in Kenya has historically been constrained by a time-consuming and highly discretionary approval and licensing system that have been vulnerable to corrupt practices.

Kenya's competition framework is governed by the Restrictive Trade Practices, Monopolies and Price Control Act 1989 (with subsequent amendments). The Act is relatively modern and has worked well in avoiding anti-competitive practices since the abolition of price controls in 1994. However, the Monopolies and Prices Commission is not an independent regulatory body but rather is under the Ministry of Finance. Although the Commission is independent in its investigation of competition-related issues, it must rely on ministerial powers to enforce orders on companies found to have breached competition rules. The Commission lacks the capacity to fully implement the legislation. Practices that seek to block entry into production and discrimination vis--vis buyers (for production, resale or final consumption) are illegal. Mergers and acquisitions must receive the green light from the Commission and the Minister of Finance in all cases, regardless of the sector, size or market share of the companies involved. This puts an unnecessary burden on investors and the Commission. However, the Commission has no jurisdiction over the electricity, telecommunication or insurance sectors. Under the law, manufacturers may not distribute their own products, and they are required to supply information to the government about their distributors.

Incoming foreign investment through acquisitions, mergers or takeovers is governed by antitrust legislation that prohibits restrictive and predatory practices that prevent the establishment of competitive markets. The legislation also aims at reducing the concentration of economic power by controlling monopolies, mergers and takeovers of enterprises. Mergers and takeovers are subject to the Companies Act, the Insurance Act (in case of insurance firms) or the Banking Act (in case of financial institutions).

A.9. Efficient Capital Markets and Portfolio Investment

Kenya has a small capital market consisting of the government controlled Capital Market Authority (CMA), Nairobi Stock Exchange (NSE), 19 securities and equities brokerage firms, 18 investment advisory firms, 6 investment banks, 13 stock brokers, 8 fund managers, 1 credit rating agency, 1 capital venture fund, 2 collective investment schemes, 3 authorized securities dealers, and 4 authorized depositories. The CMA regulates and supervises all these

institutions and oversees the development of Kenya's capital market. The NSE trades had a market capitalization of KSh 455.5 billion (about US $6.0 billion) at the end of November 2005, up from KSh 321.1 billion (about US $4.2 billion) in January 2005.

By November 2005, Kenya's banking sector consisted of 47 financial institutions, including 41commercial banks, 2 mortgage finance companies, and 2 building societies. At the end of July 2005, the total banking assets were KSh 612.5billion (about US $7.9 billion). Loans and advances accounted for 52% of the total assets equivalent to KSh 320.5 billion (about US $4.1 billion). Seven banks dominate the banking sector accounting for two thirds of the total deposits in the banking institutions. Asset quality of Kenyan banks though improving remains poor with about 19.5% equivalent to KSh 70.8 billion (about US $0.92 billion) of assets classified as non-performing. Realization of the collateral is difficult because of a slump in the property market as well as a cumbersome court system.

The NSE into three segments: the Main Investment Market (MIM), the Alternative Investment Market (AIM) and the Fixed Income Securities Market (FISM). The MIM targets mature companies with strong dividend streams. The AIM is more favorable to small and medium sized companies, and allows firms to access cheaper, longer-term sources of capital through the capital markets. And, the FISM allows businesses, financial institutions, government and supranational authorities to raise capital through the issuance of debt securities. As of October 2005, the CMA categorized the listings into 38 companies for the MIM segment, and 9 companies in the Alternative AIM. The CMA is involved in the preparation of a proposed integrated East African Capital Market. As from February 28, 2005 the NSE started settling all equity trades through an electronic Central Depository System (CDS).

Trading in commercial paper and corporate bonds issued by private companies has diversified activity at the NSE, and is regulated through a set of guidelines developed in collaboration with private sector. They allow private companies to raise funds from the public without being quoted in the NSE. Establishing the CDS encouraged the development of a secondary market for the government's one-year floating rate bond. The CDS opened a shop window for small investors offering products in multiples of KSh 50,000 (about US $667) up to KSh 1 million (about US $13,333). Expenses related to credit rating services by listed companies and other issuers of corporate debt securities are tax deductible. "Cross-shareholding" and "stable shareholder" arrangements are not used to restrict foreign investment through mergers and acquisitions. Hostile takeover defenses are uncommon. Private firms are free to adopt articles of incorporation, which limit or prohibit foreign investment, participation or control.

Foreign investors can acquire shares freely in the stock market subject to a reserved ratio of 25% for domestic investors in each listed company. To encourage the transfer of technology and skills, foreign investors are allowed to acquire up to 49% of local stockbrokerage firms and up to 70% of local fund management companies.

Credit is allocated on market terms and foreign investors are able to obtain credit on the local market. However, the number of credit instruments is relatively small. Legal, regulatory, and accounting systems are generally transparent and consistent with international norms. The corporate tax for newly listed companies is 25% for a period of five years from the date of listing. The withholding tax on dividends is 7.5% for foreign investors and 5% for local investors. Foreign investors can acquire shares in the stock market subject to a minimum reserved ratio of 25% of the share capital of the listed company for domestic investors. The 75% portion is considered as a free float available to local, foreign and regional investors without restrictions on the level of holding. Dividends distributed to residents and non-residents are subject to a final withholding tax at the rate of 5%. Dividends received by financial institutions as trading income are not subject to tax.

The Parliament amended the Banking Act 2004 to delegate the power to register and deregister commercial banks and financial institutions from the finance minister to the Central Bank of Kenya (CBK). Under the Central Bank of Kenya Act, the security of tenure for the Governor is enhanced, the Bank's operational autonomy is increased, the CBK's bank supervision functions are strengthened, and statutory restrictions on government borrowing from the Bank are codified. The CBK sets requirements for all banking institutions and building societies to disclose their un-audited financial results on a quarterly basis by publishing them in the print media.

Parliament amended the Central Bank of Kenya Act in December

2004 to establish an independent Monetary Policy Advisory Committee whose mandate is to advise the Bank with respect to monetary policy. The amended Act provides for the CBK to publish the lowest interest rate it charges on loans to banks referred to as the "central bank rate". Other amendments transferred powers to revoke and issue licenses to financial institutions from the Ministry of Finance to the CBK and introduced an "in Duplum Rule," which limits fees and fines on non-performing loans to the amount of the outstanding principal. However, the rule is yet to be implemented.

A.10. Political Violence

There have been clashes in the past between police and demonstrators over political reform and other issues. During the campaign period related to the November 21, 2005 Constitutional referendum, there were reported incidents of violent demonstrations across the country especially in the cities of Kisumu and Nairobi. Although some shops in major cities have been damaged or looted during such disturbances, the damage has been limited and has not been directed at foreign companies. Similar instances of public disorder are possible in the run up to likely Presidential and Parliamentary elections in 2007.

Terrorism and urban crime create insecurity in the country and the region. On August 7, 1998, bombs exploded at the US embassies in Nairobi and Dar es Salaam killing over 200 and wounding more than 5,000 people. A suicide bomber killed 15 people in an Israeli-owned Mombasa Hotel in November 2002.

Kenya has a good relationship with all its immediate neighbors. However, unstable, porous or conflicted borders are also a source of insecurity in the region. The 2002 terrorist attacks in Mombasa are thought to have been planned in Somalia and much of the small arms used in crime in Kenya likely originates from Somalia. The level of urban crime in Kenya is one of the highest in Africa. According to the World Bank, almost 70% of investors reported "major" or "very severe" concerns about crime, theft and disorder in Kenya, as opposed to 25% in Tanzania and 27% in Uganda.

A.11.a Corruption

Pervasive corruption has been a major reason for disinvestment in Kenya. In 2003, The government enacted the Anti-Corruption and Economic Crimes Act and the Public Officers Ethics Act, setting rules for transparency and accountability, and defining graft and abuse of office. The Public Officers Ethics Act requires certain public officials to declare their wealth and that of their spouses within 90 days from August 2, 2003. In 2004, the government established the Anti-Corruption Commission, moved forward with the implementation of the Anti-Corruption and Economic Crimes Act, and launched full implementation of the code of Ethics Act for Public Servants in 2004. A Public Procurement and Disposal Bill become law in 2005. It establishes a procurement commission to take over all procurement matters. Large public procurement programs and military procurement have been at the center of a number of corruption scandals in recent years.

On the downside, Kenya's Permanent Secretary in charge of governance and ethics resigned in February 2005, citing a lack of cooperation from high-level government officials. The office was unofficially disbanded in December 2005. The Transparency International Corruption Perceptions Index 2005, released in October 2005, ranks Kenya among the world's most corrupt nations. According to the report, Kenya made an improvement in 2004 compared to 2003 but has remained at the same position since 2004. The report ranked Kenya 144 out of the 159 nations surveyed.

11.A.b. Bilateral Investment Agreements

Kenya does not have a bilateral trade investment agreement with the United States. Kenya signed a bilateral trade and investment agreement with Germany in 1996, and agreements are pending with the United Kingdom, Italy, and Russia.

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11.A.c. OPIC and Other Investment Insurance Programs
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In 2004, the U.S. Overseas Private Investment Corporation (OPIC) supported four projects in Kenya totaling US $8.75 million. These included a company specializing in land information services, a well-drilling company, a company providing humanitarian activities and services, and a

housing company. The housing project, in which a U.S. small business will use an OPIC loan to build 400 affordable housing units in Nairobi, represents significant progress towards fulfilling a 2003 Memorandum of Understanding between OPIC and the Kenyan government designed to leverage OPIC programs to increase U.S. private sector investment in Kenya. Historically, OPIC has committed US $55.8 million to 37 projects in Kenya.

A.11.d. Labor

Kenya has a population estimated at over 33 million, about 52% of whom constitute the working population, 75% working in agriculture sector. Several million Kenyans work in the informal sector. High population growth of 2.95% per annum means there is an on-going demand for new jobs. Kenya has an abundant supply of well-educated and skilled labor in most sectors at internationally competitive rates. High HIV/AIDS prevalence (estimated at 6.7%) poses a serious threat to human resource development.

Kenya's laws generally provide safeguards for worker rights and mechanisms to address complaints of their violation. The labor laws of Kenya are embodied in its Employment Act (revised 1984) and the Regulation of Wages and Conditions of Employment Act (revised 1980). The Employment Act covers wages, leaves, housing, health and welfare, local and foreign contracts of service, the employment of women and youth, and other administrative matters. Employers in ailing industries are allowed to retrench workers, irrespective of the provisions of their collective bargaining agreements. All labor laws, with the exception of the Factories Act (permitting occupational safety and health inspections), apply in Kenya's Export Processing Zones (EPZ), which employed about 31,000 workers in 2005. Following a number of strikes in the EPZs in January - March 2003, EPZ workers are now allowed to unionize. In 2004, seven garment factories in the Athi River EPZ signed a collective bargaining agreement with a local union. Strikes in the EPZs declined in 2004, and were virtually non-existence in 2005.

As few as seven employees may form a union. There are 41 trade unions registered under the Trade Union Act. All but six, including the 240,000-member Kenya National Union of Teachers, the Universities Academic Staff Union, and the Kenya Union of Civil Servants, are affiliated with the Central Organization of Trade Unions (COTU), which has about 300,000 members. The unions are organized by industry rather than craft, and union membership is voluntary. In April 2004 the U.S. government and the International Labor Organization (ILO)-funded tripartite Labor Law Reform Task Force completed a new set of labor laws which were presented to the Attorney General. The proposed new laws incorporate the ILO core labor standards and are AGOA consistent. However, these proposed changes to labor law are yet to be tabled in Parliament for debate and possible enactment.

The law permits strikes, but unions must notify the government 21-28 days before a strike is called. During this period, the Minister of Labor and Human Resource Development may mediate the dispute, nominate an arbitrator, or refer the matter to the Industrial Court. Once a dispute is referred to mediation, fact-finding, or arbitration, any subsequent strike is illegal. Kenya's Industrial Court provides generally effective and timely rulings. The court has penalized employers for discriminating against employees because of their union activities; usually requiring the payment of lost wages. Reinstatement is not a common remedy.

Overall, Kenya has relatively harmonious labor relations. The number of trade disputes reported to the Ministry of Labor and Human Resource Development under the Trade Disputes Act was 1,152 in 2004 compared to 2,323 in 2003. Of the 2004 trade disputes, 131 reached the Industrial Court for adjudication. The number of strikes dropped from 161 in the year 2003 to 41 in 2004. The number of workers involved in 2004 was 31,699 compared to 62,312 in 2003. The main sectors affected by the strikes in the year 2004 were manufacturing (14), agriculture (11), and commerce (5).

The normal workweek is 45 hours, after which overtime must be paid. The Regulation of Wages and Conditions of Employment Act provides that the total hours worked in any 2-week period should not exceed 120 hours (144 hours for night workers). Wages and conditions of employment are established in negotiations between unions and management. There are twelve separate minimum wage scales, varying by location, age and skill level. The lowest minimum wage is currently US $56 (KSh 4,335) per month in urban areas and US $30 (KSh 2,312) in rural areas. Workers covered by a collective bargaining agreement generally receive a better wage and benefit package than those not covered (on average

US $97 (KSh 7,303) per month), plus a housing and transport allowance, which may account for 25 to 50 percent of a Kenyan worker's compensation package.

Kenyan law establishes detailed environmental, health and safety standards, but these tend to not be strictly enforced. . Although fines specified in the Factories Act (regarding occupational safety and health) are the highest in the labor laws, they have not been increased since 1990 and are generally too low to serve as a deterrent to unsafe practices. Rules falling under the Directorate of Occupational Health and Safety Services (OHSS), which operates under the Ministry of Labor and Human Resource Development, apply to to employers with 20 or more employees. The OHSS Directorate maintains a register of approved and certified Safety and Health advisers who the employers may use in carrying out safety audits in the factories and other places of work. These audits are supposed to be carried at least once a year and a copy of the audit report forwarded to the OHSS Directorate within 30 days after the audit.

Work permits are required for all foreign nationals who wish to work in Kenya. Although there is no official time limit, a visitor's pass or a visa is usually valid for three months and the Immigration department must grant applicable extensions upon proper application. Work permits may be applied for in any major city in Kenya, but all applications go to Nairobi for processing. Foreign investors are required to sign an agreement with the government describing training arrangements for phasing out expatriates. High unemployment levels have made it increasingly difficult for expatriates to renew or obtain work permits. The Immigration Department has occasionally cancelled work permits before the expiry date without giving reasons. According to the law, the immigration officer issuing entry permits may require a bond of not less than KSh 100,000 (US $1,293) for each permit to be deposited with immigration.

A.11.e. Foreign-Trade Zones/Free Ports

By December 2005, 41 Export Processing Zones (EPZs) had been established around the country and 77 export-oriented firms were in operation. A government agency, Kenya Export Processing Zone Authority (EPZA) regulates the zones. Of the 41 zones, only 2 are developed and managed by the public sector. The rest are privately owned and managed by licensed EPZ developers/operators. Of the 77 enterprises operating in EPZs, 14% are Kenyan owned, 58% are foreign investments, and 28% are joint ventures. In 2004, 74% of EPZ exports went to the U.S., with the European Union accounting for 8.5% and EAC/COMESA 4%. The largest privately owned EPZ is the Sameer Industrial Park located in Nairobi's Industrial area. It has been operational since ¶1990. The Athi River EPZ, near Nairobi, is the largest publicly owned EPZ, with 230 acres currently developed. The GOK is also developing another large export processing zone in Mombasa, Kenya's main seaport.

A.11.f. Foreign Direct Investment Statistics

The deterioration in economic performance, together with rising problems of corruption, governance, inconsistency in economic policies and structural reforms and the deterioration of public services and infrastructure generated a long period of low FDI inflow that started in the early 1980s and continues to date. FDI inflows in 1996-2003 averaged US$39 million a year. According to Investment Policy Review of Kenya February 2005 report, the FDI stock in 2005 was US$1,045.9 million which compared poorly with Tanzania and Uganda at US$2,582.5 million and US$2,042.2 million respectively. However, poor data collection leads to underestimating actual inflows of FDI. There is no clear mandate by any agency to collect data on FDI. The Central Bank of Kenya (CBK), the Kenya Investment Authority (KIA), and the Central Bureau of Statistics (CBS) all collect only partial information on either balance of payments inflows or investment projects.

Kenya's February 2005 Investment Policy Review estimates the market value of US investment at around US$285 million, primarily in commerce, light manufacturing, and tourism industry. Most foreign investment in manufacturing since 2001 has been in the EPZs, with the majority (average of 63.6% of total investment, employment, sales, local resource utilization) in AGOA-related textiles. The government does not publish data on the value of foreign direct investment (position/stock and annual investment capital flows) by country of origin or by industry sector destination. Neither is data available on Kenya's investment abroad. On its website, UNCTAD does provide some additional data on FDI in Kenya.

More than 200 Trans-National Corporations operate in Kenya. The main traditional sources of investment are United Kingdom, Germany, and the United States, with Chinese investment increasing in the last two years.

Web Resources

Telkom Kenya - http://www.telkom.co.ke

Communications Commission of Kenya - http://www.cck.co.ke

Safaricom - http://www.safaricom.co.ke

Cable News Network - http://www.cnn.com

British Broadcasting Corporation - http://www.bbc.com

Reuters - http://www.reuters.com

Kenya Broadcasting Corporation - http://www.kbc.co.ke

International Chamber of Commerce - http://www.iccwbo.org

African Trade Insurance Agency - http://www.ati-aca.com

Export Processing Zones Authority - http://www.epzahq.com

African Growth Opportunity Act - http://www.agoa.gov

Capital Markets Authority - http://www.cma.or.ke

Nairobi Stock Exchange - http://www.nse.co.ke
Central Organization of Trade Union - http://www.cotu-kenya.org

Sameer Industrial Park - http://www.sameer-group.com

Central Bank of Kenya - http://www.cbk.go.ke

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